

REMARKS

Claims 21, 54-56, 58, 60, 62, 63, 65, 67-70, and 72 are pending in the application. Claims 54, 55, and 68-70 are rejected. Claims 21, 56, 58, 60, 62, 63, 65, 67, and 72 are allowed. Claims 54, 55, and 68-70 are canceled. Claims 21, 56, 58, 60, 62, 63, 65, 67, and 72 remain for consideration.

In this response, Applicant is canceling the rejected claims so that the allowed claims may pass to issuance. The cancellation of the rejected claims should not be interpreted as a reflection upon the Applicant's opinions regarding patentability of the canceled claims. Applicant reserves the right to re-submit the canceled claims for consideration via a continuation application.

Allowable Subject Matter

Claims 21, 56, 58, 60, 62, 63, 65, 67, and 72 are allowed.

Claim Rejections – 35 USC §102(b); Kuslich

The Examiner rejects claims 54, 55, 68, and 69 as being anticipated by Kuslich (U.S. 5,571,189). The Examiner states:

Kuslich discloses an interbody spine fusion comprising a body (40) defining an outside surface, a carrier (52), a carrier receiving area (see Figure 6), implanting the bone implantable device adjacent a target bone structure (see Fig. 6), applying biologically active substance onto the carrier after said step of implanting for subsequent delivery to said target bone structure (see col. 7, lines 8-20; col. 7, lines 47-52; col. 9, lines 40-58).

Claims 54, 55, 68, and 69 are canceled.

Claim Rejections – 35 USC §102(b); Brekke

The Examiner rejects claims 54, 55, 68, and 69 as being anticipated by Brekke (U.S. 5,683,459). The Examiner states:

Brekke discloses an interbody spine fusion comprising a body (see Figs. 1-6) defining an outside surface, a carrier, a carrier receiving area (see pores), implanting the bone implantable device adjacent a target bone structure, applying biologically active substance onto the carrier after said step of implanting for subsequent delivery to said target bone structure (see col. 7, lines 14-67).

Claims 54, 55, 68, and 69 are canceled.

Claim Rejections – 35 USC §103(a); Kuslich

The Examiner rejects claim 70 as being unpatentable over Kuslich (U.S. 5,571,189). The Examiner states:

Kuslich discloses the invention substantially as claimed. However, Kuslich is silent regarding the biologically active substance liquefies after contact with body fluids.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the biological active substance of the Kuslich reference by having an active substance that liquefies after body contact because Applicant has not disclosed that by having the above mentioned substance provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with Kuslich reference because it would perform equally as well.

Therefore, it would have been an obvious matter of design choice to modify the Kuslich reference to obtain the invention as specified in claim 70.

Claim 70 is canceled.

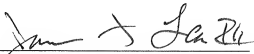
All rejected claims are canceled. All remaining claims have been indicated to be allowed. Applicant, therefore, requests that the application pass to issuance.

Considering the foregoing, it is sincerely believed that this case is in condition for allowance, which is respectfully requested.

This paper is intended to constitute a complete response to the outstanding Office Action. Please contact the undersigned if it appears that a portion of this response is missing or if there remain any additional matters to resolve. If the Examiner feels that processing of the application can be expedited in any respect by a personal conference, please consider this an invitation to contact the undersigned by phone.

Respectfully Submitted,

8-26-04
Date


James F. Lea III, Reg. No. 41,143

FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS, P.C.
321 South Boston, Suite 800
Tulsa, OK 74103-3318
(918) 599-0621

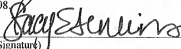
Attorneys for Applicant

Customer No. 22206

CERTIFICATE OF MAILING UNDER 37 CFR 1.8

I hereby certify that this correspondence and any document referred to as being attached thereto is being transmitted via facsimile to Examiner Alvin J. Stewart in Art Unit 3738 in the U.S. Patent Office at fax number 571-273-8300, OR is being electronically filed via the USPTO's EFS Web filing system on August 26, 2008.

Stacy E. Jenkins
(Type name of person mailing paper)


(Signature)